

AGENDA ITEM DETAILS

Subject: Consideration of Readoption of Rules of the Board of Trustees, Texas Administrative Code, Title 34, Part IV, Chapter 69 (Membership and Refunds), with Proposed Amendments, Including New Provisions Regarding Pension Forfeiture Resulting from Criminal Convictions; and Consideration of Proposed Amendments to Chapter 85 (Flexible Benefits) - (Action)

RECOMMENDED ACTION:

Move that the Board of Trustees re-adopt Texas Administrative Code, Title 34, Part IV, Chapter 69 (Membership and Refunds), as revised by the proposed amendments detailed in Exhibit A to this agenda item, including changes to the text published in the *Texas Register*.

Further move that the Board of Trustees adopt proposed amendments to Chapter 85 (Flexible Benefits) as detailed in Exhibit B to this agenda item.

Background/Analysis Chapter 69:

Required Rule Review

Pursuant to Tex. Gov't Code § 2001.039, state agencies are directed to review administrative rules every four years to assess whether the reasons for adopting the rules continue to exist. Pursuant to this statute, ERS staff reviewed Chapter 69 (Membership and Refunds) and determined that the reasons for adopting the chapter continue to exist.

Proposed Amendments to Chapter 69 (Membership and Refunds)

Tex. Gov't Code § 810.003 (enacted by the 85th Legislature, Regular Session (2017), Senate Bill 500) and § 810.004 (enacted by the 86th Legislature, Regular Session (2019), Senate Bill 1570) direct the Board to adopt rules and procedures to implement statutory provisions that require the termination of annuities of certain elected officials and corrections employees who are convicted of specified crimes. ERS staff from the Office of the General Counsel and the Customer Benefits Division carefully analyzed the statutory language and developed a comprehensive set of proposed rules that delineate when and how ERS will terminate the annuity of an elected official or corrections officer who is convicted of a qualifying felony. The new provisions, which are set forth in §§ 69.2-69.6, also are intended to fill gaps and clarify potential ambiguities in the statutory language. The full text of the proposed new rules is provided in Exhibit A.

In addition, staff developed proposed amendments to § 69.1 (Employees Covered by Teacher Retirement System) and § 69.9 (Trustee to Trustee Transfers). The proposed amendments are non-substantive and intended only to clarify and simplify existing rule language.

Sections 69.3 (Members of Governing Boards) and 69.7 (Reinstatement of Refunded Accounts within 15 Days) were repealed so that the language of these sections could be moved to § 69.7 and § 69.8, respectively, to accommodate the new provisions regarding pension forfeiture. Section 69.5 (Interest Payable at Time of Refund) was repealed because this section is now obsolete.

Notice of the proposed amendments to Chapter 69 was published in the October 29, 2021 issue of the *Texas Register* (46 TexReg 7360) as required by statute. **ERS did not receive any public comment regarding the proposed rules.**

Background/Analysis Chapter 85:

The amendments to Chapter 85 are proposed pursuant to Tex. Insurance Code § 1551.052, which authorizes the ERS Board of Trustees to adopt rules necessary to carry out its statutory duties and responsibilities, and Tex. Insurance Code § 1551.206(b), which authorizes the Board to include in the TexFlex cafeteria plan any benefit that may be included in a cafeteria plan under federal law.

ERS administers the TexFlex Program, which includes a flexible spending account (FSA) program. The FSA program allows active employees to set aside, on a pre-tax basis, a portion of earnings to pay for certain qualifying expenses, such as health care and dependent care expenses.

Chapter 85 serves as the TexFlex Program's plan document. The proposed rule changes incorporate COVID-19 relief options within the plan document for dependent care reimbursement accounts and health care FSAs, including limited purpose FSAs, for Plan Years 2020 and 2021. The changes and allowances are provided under the federal Consolidated Appropriations Act of 2021 (the Act), which was signed into law on December 27, 2020. ERS has been administering the COVID-19 relief options for TexFlex participants as allowed under the Act.

The Act provides for temporary allowances to help address challenges resulting from the fact that many employees made Plan Year 2020 benefit elections prior to the pandemic. Due to the pandemic, employees were unable to use their FSA benefits as they originally intended. The COVID-19 relief options addressed within these proposed changes reflect the allowances provided under federal regulation.

As further required under federal regulation, plan amendments to incorporate the temporary allowances must be adopted no later than the last day of the first calendar year after the end of the plan year in which the amendment is effective. Thus, the deadline for proposed plan changes, as required by the Act, is December 31, 2021.

The proposed changes also eliminate the qualified transportation benefit plan (Commuter Spending Account). The ERS Board terminated the Commuter Spending Account effective August 31, 2021, with a runout period ending December 31, 2021. A participant with a balance remaining in their Commuter Spending Account following the end of the runout period will receive a refund. Refund payments will be taxable.

Notice of the proposed amendments to Chapter 85 was published in the October 22, 2021 issue of the *Texas Register* (46 TexReg 7198) as required by statute. **ERS did not receive any public comment regarding the proposed rules.**

Staff Recommendation:

Move that the Board of Trustees take the following action with regard to the Rules promulgated in Texas Administrative Code, Title 34, Part IV:

1. Re-adopt Chapter 69 with proposed amendments concerning Membership, Pension Revocation, and Refunds, as detailed in Exhibit A to this agenda item; and
2. Adopt proposed amendments to Chapter 85 concerning Flexible Benefits, as detailed in Exhibit B to this agenda item.

A proposed motion is included at the top of this agenda item for consideration.

ATTACHMENTS:

1. Exhibit A – Proposed Amendments to TAC 69
2. Exhibit B – Proposed Amendments to TAC 85
3. Slides – Rules of Board of Trustees Chapters 69 and 85